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Attorneys for Plaintiff Sallie A. Durham

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SALLIE A. DURHAM, an individual on
behalf of herself and all others similarly
situated,

Plaintiffs,

vs.

CONTINENTAL CENTRAL CREDIT, a
California corporation; SAN
CLEMENTE COVE VACATION
OWNERS ASSOCIATION, A California
corporation; VACATION RESORTS
INTERNATIONAL, INC., a California
corporation; and DOES 1-10, inclusive,

Defendant(s).

CASE NO. 07cv1763BTM (WMc)

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF THE
FEDERAL FAIR DEBT COLLECTION
PRACTICES ACT; THE CALIFORNIA
ROSENTHAL ACT; AND
DEMAND FOR JURY TRIAL**

[15 U.S.C. §§1692 et seq., California Civil
Code §§ 1788 et seq.]

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I. INTRODUCTION

1. This First Amended Class Action Complaint ("FAC") arises from the defendants' pattern and practice of adding unfair, unreasonable, and unlawful collection fees to certain debts that they attempt to collect, imposing an unconscionable penalty on consumers from whom those certain debts are collected, and thereby violating the Federal Fair Debt Collection Practices Act, 15 USC §§1692 et seq. ("Federal Act") and the California Rosenthal Act, Cal. Civ. Code §§ 1788 et seq. ("Rosenthal Act") by making false, deceptive, and misleading representations in connection with the collection of a debt and using unfair or unconscionable means to collect or attempt to collect a debt. In addition, defendant Continental Central Credit failed to effectively provide the notice of debt validation rights in violation of the Federal Act and the Rosenthal Act. Plaintiff **DOES NOT** seek to apply standards governing homeowners' associations, as set forth in Cal. Civ. Code §1366.1, to any defendant that is not an "association" within the meaning of Cal. Civ. Code §1351(a). **Plaintiff demands a jury trial.**

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. Sections 1692k(d) and 28 U.S.C. Sections 1331, 1337, and under the doctrine of pendant jurisdiction as set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966). Venue is proper in the Southern District because two defendants maintain principal offices in the County of San Diego within the Southern District.

III. PARTIES

3. Plaintiff, SALLIE A. DURHAM (hereinafter "Plaintiff"), is a natural person residing in the County of Orange, California. Plaintiff brings this action both in her individual capacity and on behalf all others similarly situated.

4. Plaintiff is informed and believes and thereon alleges that at all times mentioned in

1 this FAC, Defendant, SAN CLEMENTE COVE VACATION OWNERS ASSOCIATION (the
2 “Association”) was and is a California Corporation with its principal place of business in the city of
3 Carlsbad, County of San Diego, State of California. Plaintiff is further informed and believes and
4 thereon alleges that in the normal course of its business, the Association assesses and receives
5 association fees from its members for services the Association renders. Plaintiff is further informed
6 and believes and thereon alleges that the association fees are consumer credit transactions in that the
7 Association’s services are acquired on credit in that they are billed on a periodic basis after the
8 services were rendered. Plaintiff is informed and believes, and thereon alleges that the Association
9 engaged in debt collection by ratifying and approving the unlawful acts of the other defendants
10 rendering the Association a debt collector as defined in Cal. Civil Code §1788.2(c).
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13 5. Plaintiff is informed and believes, and thereon alleges that at all times mentioned
14 in this FAC, defendant VACATION RESORTS INTERNATIONAL (“VRI”) was and is a California
15 corporation with its principal offices located in Laguna Hills, County of Orange, State of California.
16 Plaintiff is further informed and believes and thereon alleges that VRI was and is a management
17 company for the Association and with whom the Association contracted to manage, process
18 reservations, and assess bills and collection fees relating to the resort’s operations. Plaintiff is further
19 informed and believes and thereon alleges that at a specific time unknown, but sometime after Plaintiff
20 purchased the time-share, VRI was involved in the collection efforts against Plaintiff and others
21 similarly situated, and was and is a debt collector as defined in 15 U.S.C. §1692a and Cal. Civil Code
22 §1788.2(c).
23

24 6. Plaintiff is informed and believes and thereon alleges that at all time mentioned in
25 this FAC, defendant Does 1 through 3 were and are corporations or other entities of unknown form
26 engaged in the business of providing management services to the Association, including arranging or
27 engaging in the collection of past due Association fees, and were and are debt collectors as defined

1 in 15 U.S.C. §1692a and/or Cal. Civil Code §1788.2(c).

2 7. Plaintiff is informed and believes and thereon alleges that at all times mention in
3 this FAC, defendant Continental Central Credit (“CCC”) was and is a California corporation engaged
4 in the business of collecting money for others, with its principal place of business located in the city
5 of Carlsbad, County of San Diego, State of California, and was and is a debt collector as defined in
6 15 U.S.C. §1692a and Cal. Civil Code §1788.2(c). Plaintiff is further informed and believes and
7 thereon alleges that at all times mentioned in this FAC, CCC was engaged by the Association or its
8 agents to collect fees from the Association’s members.
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10 8. The true names and capacities, whether corporate, individual, or other of the
11 defendants sued herein as Does 1 through 10 are presently unknown to Plaintiff who therefore sues
12 said defendants by such fictitious names. Plaintiff will seek leave to amend this FAC to reflect the
13 true names and capacities of said fictitiously named defendants when the same have been ascertained.
14 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
15 is responsible for or participated in the acts complained of herein.
16

17 9. Plaintiff is informed and believes and thereon alleges that at all times mentioned
18 in this FAC, each of the defendants were the agent, employee, independent contractor or co-
19 conspirator of each co-defendant, and in doing the things herein alleged was acting within the course
20 and scope of such capacity with the full knowledge and consent of each said co-defendant.
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22 **IV. COMMON FACTUAL ALLEGATIONS**

23 10. Plaintiff incorporates the allegations in Paragraphs 1 through 9 above with the same
24 force and effect as if herein set forth.
25

26 11. In 2002, Plaintiff became the owner of a timeshare interest in real property located
27 at San Clemente Cove, a timeshare development in the County of San Diego, State of California.
Plaintiff acquired such interest pursuant to a written contract. The timeshare was acquired for her and

1 her family's personal use and enjoyment. Plaintiff is informed and believes and thereon alleges that
2 her interest was foreclosed upon by a yet unknown third party.

3 12. Plaintiff is informed and believes and thereon alleges that on a date presently
4 unknown to her, certain amounts were assessed or allegedly assessed against her by the Association
5 for services rendered or allegedly rendered by the Association and for Association's membership fees,
6 under the authority of the written rules and by-laws of the Association.
7

8 13. Plaintiff is informed and believes and thereon alleges that on a date presently
9 unknown to her, the Association referred such assessments against her to CCC for collection.
10

11 14. Plaintiff is informed and believes and thereon alleges that the written rules of the
12 Association provide that the Association is entitled to recover reasonable collection costs incurred by
13 it in the collection of delinquent assessments.

14 15. Plaintiff is informed and believes and thereon alleges that at all times mentioned
15 in this FAC the Association, VRI, and CCC had an agreement that neither VRI nor CCC would
16 charge the Association any collection fees, but would instead add a 40% collection fee, or someother
17 arbitrary fee CCC named a "Coll fee", to the amount of each delinquent assessment referred to them
18 by the Association for collection, and would collect that 40% collection fee or "Coll fee" from the
19 debtors. Plaintiff is further informed and believes and thereon alleges that CCC had an agreement
20 with VRI to kickback a portion of any collection fees collected by CCC for assessments referred to
21 them by the Association for collection.
22

23 16. On or about September 11, 2006, Plaintiff received an "Important Notice" dated
24 09-11-06 from CCC, which demanded payment in the "Total" amount of \$1,890.55, which consisted
25 of "Principal" in the amount of \$1,339.45, "Interest" in the amount of \$15.04, and a "Coll fee" in the
26 amount of \$535.78, which represented 40% of the "Principal" amount. The September 11, 2006
27 notice was the first written communication between Plaintiff and CCC. A redacted copy of the

1 September 11, 2006 notice is herein attached and incorporated by reference as Exhibit "A".

2 17. On or about October 9, 2006, Plaintiff received a second collection demand from
3 CCC. The October 9, 2006 notice, entitled "NOTICE OF INTENT", demanded payment in the
4 "Total" amount of \$1,900.55, which consisted of the same "Principal" amount of \$1,339.45, "Interest"
5 in the amount of \$25.32, and the same "Coll fee" in the amount of \$535.78, which again represented
6 40% of the "Principal" amount. The amount of the "Coll fee" remained the same for both the first and
7 second notices attempting to collect the alleged debt. In addition, the Notice Of Intent, which was
8 received by Plaintiff less than 30 days from when she received Exhibit "A", stated that "[t]o prevent
9 further collection efforts, **payment in full is required immediately**" {emphasis added} A true copy
10 of the October 9, 2006 notice is herein attached and incorporated by reference as Exhibit "B".
11

12 18. Within thirty (30) days of the date of the second notice, Plaintiff disputed the
13 alleged debt in writing, and demanded verification thereof from CCC. A true copy of Plaintiff's
14 dispute letter dated October 17, 2006 is herein attached and incorporated by reference as Exhibit "C".
15

16 19. CCC ignored Plaintiff's dispute and request for verification of the alleged debt.
17

18 20. Plaintiff is informed and believes and thereon alleges that CCC, pursuant to
19 agreement with its clients, and pursuant to its own established business practices, routinely makes a
20 practice of adding a 40% collection fee or a "Coll fee" to debts it collects or attempts to collect from
21 debtors.

22 21. Plaintiff is informed and believes and thereon alleges that CCC's practice is to add
23 the 40% collection fee or the "Coll fee" to the amount of the debt at the time of assignment or prior
24 to its first communication with the debtor without regard to the actual collection costs incurred. As
25 such, the 40% collection fee or the "Coll fee" is arbitrary and bears no relationship to the actual cost
26 of collection, and is, therefore, unreasonable and unconscionable.
27

22. Plaintiff is informed and believes and thereon alleges that Defendants intentionally added the arbitrary collection fee to debts they were attempting to collect for the express purpose of attempting to collect unfair and unreasonable collection fees from consumer debtors, attempting to imposing unfair penalties on consumer debtors, and attempting to cause consumer debtors to bear a portion of the collection expenses attributable to debtors from whom no collections were effected, thereby requiring consumer debtors to be responsible for the economic well being of CCC, VRI, and the Association.

V. CLASS ACTION ALLEGATIONS

23. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure in her representative capacity on behalf of herself and a class (the “Class”) of all others similarly situated.

24. The Class that Plaintiff seeks to represent is defined as all persons:

- I. From whom a collection fee that bears no relation to the actual cost of collection was demanded by any Defendant, or 2) a percentage collection fee was demanded by any Defendant, or 3) an arbitrary collection fee was demanded by any Defendant, during the one year period preceding the filing of this action (the “Class Period”); and/or
- II. Who received correspondence from any Defendant, within the 30 day period after receiving the “Notice of Debt”, containing language that is or is similar to the statement, “payment in full is required immediately,” during the Class Period.

25. The nationwide Class comprises two Subclasses: (i) all Class members who are California residents (the “California Subclass”); and (ii) all Class members who are “consumers” within the meaning of 15 USC §1692(3) (the “FDCPA Subclass”).

26. Specifically excluded from the proposed Class are the Court and its staff, Defendants, any entity in which any of the Defendants have a controlling interest, and the officers,

1 directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such
2 individual or entity, or any person who has already filed an individual action asserting such claims.

3 27. Plaintiff meets the prerequisites of Rule 23(a) to bring this action on behalf of the
4 Class because:

5 a. NUMEROSITY: The Class consists of thousands of individuals and is so numerous
6 that joinder of all members as individual plaintiffs is impracticable.

7 b. COMMONALITY: There are questions of law and fact common to the Class. Such
8 common questions include, but are not limited to:

9 i. Whether the collection fee demanded by Defendant(s) from Class members was
10 based on actual collection costs incurred;

11 ii. Whether the collection fee demanded by Defendant(s) from Class members was
12 arbitrary and unreasonable;

13 iii. Whether the collection fee demanded by Defendant(s) from Class members was
14 authorized by contract or by law;

15 iv. Whether the demand of the collection fee by Defendant(s) from Class members
16 constituted the use of unfair or unconscionable means to attempt to collect a debt;

17 v. Whether the demand for the collection fee constituted a misrepresentation of the
18 amount or character of a debt;

19 vi. Whether the statement, "payment in full is required immediately" made to Class
20 members within thirty days after receipt of the "notice of debt" contradicts or
21 overshadows the debt validation notice;

22 vii. Whether the statement, "payment in full is required immediately" made to Class
23 members within thirty days after receipt of the "notice of debt" makes the debt
24 validation notice ineffective; and
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viii. Whether, as a result of Defendant(s) misconduct, Plaintiff and the Class are entitled to damages, restitution or equitable relief, and if so, the amount and nature of such relief.

c. TYPICALITY: Plaintiff's claims are typical of the claims of the Class members because they are based on the same factual, legal and remedial theories as the claims fo the Class.

d. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained competent litigation counsel experienced in the Fair Debt Collection Practices Act, the Rosenthal Act, and class action litigation. Plaintiff has no interest that are antagonistic to, or in conflict with, the members of the Class.

e. SUPERIORITY: The Class and Subclasses are readily definable. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Since the size of an individual Class member's damages may be relatively small in comparison to the expense and burden of litigation, it would be impracticable and not economically feasible for members of the Class to seek redress individually. Prosecution of individual claims by members of the Class, even if possible, would create a risk of inconsistent or varying adjudications with respect to individual Class members against Defendants, could impose inconsistent standards of conduct on the Defendants, and would result in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. Therefore, a class action is the only method whereby Plaintiff and members of the Class can efficiently seek complete redress and obtain a uniform adjudication of claims.

FIRST CAUSE OF ACTION
VIOLATION OF THE FEDERAL
FAIR DEBT COLLECTION PRACTICES ACT
(Against Defendants CCC and VRI Only)

28. Plaintiff incorporates the allegations in Paragraphs 1 through 27 above with the

1 same force and effect as if herein set forth.

2 29. Defendants violated the **Federal Fair Debt Collection Practices Act** as follows:

3 29.1. 15 USC Section 1692e(2)(A): By using false, deceptive, and misleading means
4 in connection with the attempt to collect a debt by adding an unlawful collection fee to the alleged
5 debt and thereby making a false representation of the amount of the alleged debt;

6 29.2. 15 USC Section 1692e(2)(B): By using false, deceptive, and misleading means
7 in connection with the attempt to collect a debt by the false representation of services rendered or
8 compensation which may be lawfully received by any debt collector for the collection of a debt;

9 29.3. 15 USC Section 1692e(1): By using false representations or deceptive means to
10 collect or attempt to collect a debt or to obtain information concerning a consumer;

11 29.4. 15 USC Section 1692f: By using unfair or unconscionable means to collect or
12 attempt to collect a debt;

13 29.5. 15 USC Section 1692f(1): By collecting or attempting to collect amounts,
14 including a collection fee that bears no relation to the actual cost of collection, not expressly
15 authorized by the agreement creating the debt or permitted by law; and

16 29.6. 15 USC Section 1692g: By failing to effectively provide a "Notice of Debt".

17 30. Plaintiff is informed and believes and thereon alleges that unless restrained from
18 doing so, Defendants will continue to violate the Federal Act by continuing to demand and collect an
19 arbitrary and unreasonable collection fee against consumer debtors whose accounts are referred to
20 CCC for collection by homeowners' associations or their agents and continuing to fail to effectively
21 provide the "Notice of Debt".

22 31. As a result of Defendants' violations, Plaintiff as an individual is entitled to
23 recover damages according to proof along with statutory damages in an amount not to exceed
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1 \$1,000.00. Class members are entitled to recovery damages according to proof along with statutory
2 damages in an amount not to exceed the lesser of \$500,000.00 or 1% of the net worth of defendants
3 VRI and CCC. Plaintiff and the Class are further entitled to recover reasonable attorneys' fees and
4 costs.

5
6 **SECOND CAUSE OF ACTION**
7 **VIOLATION OF THE ROSENTHAL ACT**
8 **(Against All Defendants)**

9 32. Plaintiff incorporates the allegations in Paragraphs 1 through 31 above with the
10 same force and effect as if herein set forth.

11 33. Defendants violated the **Rosenthal Act** as follows:

12 33.1. Cal. Civ. Code Section 1788.17: By violating sections 1692e(2)(A), 1692e(2)(B),
13 1692e(1), 1692f, 1692f(1), and 1692g of the Federal Act; and

14 33.2. Cal. Civ. Code Section 1788.13(e): By falsely representing that the alleged debt
15 may be increased by the addition of fees or charges, when in fact such fees or charges may not legally
16 be added to the existing obligation.

17 34. Plaintiff is informed and believes and thereon alleges that unless restrained from
18 doing so, Defendants will continue to violate the Rosenthal Act by continuing to demand and collect
19 an arbitrary and unreasonable collection fee against consumer debtors whose accounts are referred to
20 CCC for collection by homeowners' associations or their agents.

21 35. As a result of Defendants' violations, Plaintiff as an individual is entitled to
22 recover damages according to proof along with statutory damages in an amount not less than \$100.00
23 and not more than \$1,000.00. Class members are entitled to recovery damages according to proof
24 along with statutory damages in an amount not to exceed the lesser of \$500,000.00 or 1% of the net
25 worth of defendants VRI and CCC. Plaintiff and the Class are further entitled to recover reasonable
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attorneys' fees and costs.

36. In addition, Plaintiff and the Class are entitled to a declaration of this Court that the conduct of Defendants constitutes violations of the Rosenthal Act, for an order enjoining such conduct in the future, and for reasonable attorneys' fees and costs as is provided by statute. Plaintiff is informed and believes and thereon alleges that an injunction is appropriate inasmuch as in its absence, Defendants' violations of the Rosenthal Act will continue.

WHEREFORE, Plaintiff, on behalf of herself and the Class prays for a judgment against Defendants as follows:

- 1) For an order certifying that the action may be maintained as a class action, on behalf of the proposed Class and any Subclass(es) the Court may deem appropriate;
- 2) For an award of statutory damages to Plaintiff and other members of the Class pursuant to the Federal Fair Debt Collection Practices Act and the Rosenthal Act;
- 3) For an order enjoining defendants from engaging in the conduct complained of;
- 4) For damages according to proof;
- 5) For an award of reasonable attorneys' fees and costs provided for by statute; and,

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6) Such Other and Further Relief as the Court may deem
just and proper under the circumstances.

Date: 11/30/2007

/s/ Deborah L. Raymond
Deborah L. Raymond, Esq.
California State Bar No. 173528
Attorney for Plaintiff

380 Stevens Avenue, Suite 205
Solana Beach, CA 92075
(858) 481-9559

DEMAND FOR JURY TRIAL

Please take notice that plaintiff, Sallie A. Durham, on behalf of herself and the Class
demands trial by jury on all issues triable.

Date: 11/30/2007

/s/ Deborah L. Raymond
Deborah L. Raymond
Attorney For Plaintiff

REDACTED

CONTINENTAL CENTRAL CREDIT, INC. FOR: SAN CLEMENTE COVE HOA
1817 ASTON AVE SUITE 105 A NON-PROFIT CORPORATION
PO BOX 131120 F10509C
CARLSBAD, CA 92008 Principal : \$ 1339.45
800 525-6000 760 931-7799 Interest : \$ 15.04
Coll fee : \$ 535.78
Total : \$ 1890.27

YOUR ACCOUNT HAS BEEN ASSIGNED TO US FOR IMMEDIATE COLLECTION. PLEASE REMIT THE BALANCE IN FULL OR PRESENT YOUR DEFENSE
AGAINST THIS CLAIM. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

SALLIE A DURHAM File # Date: 03-11-06
24161 HOLLYOAK A 3067702 Contact: PAT SMITH
ALISO VIEJO CA 92656

ALL CHECKS RETURNED FOR NON-SUFFICIENT FUNDS WILL BE CHARGED A \$25.00 FEE.
(SEE OTHER SIDE FOR IMPORTANT MESSAGE) RETAIN THIS PORTION FOR YOUR RECORDS

IMPORTANT NOTICE!
THIS WAS SENT TO YOU BY A COLLECTION AGENCY.
NOTICE - THE FEDERAL LAW REQUIRES WE INFORM YOU THAT THIS IS AN ATTEMPT TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

EXHIBIT "A"

CONTINENTAL CENTRAL CREDIT, INC

1817 ASTON AVE SUITE 105

P.O. BOX 131120

CARLSBAD CA 92008

(760) 931-7799

(800) 525-6000

SALLIE A DURHAM
24161 HOLLYDAK A
ALISO VIEJO CA 92656

File #
3067702

Date: 10-09-06

Principal : \$ 1339.43
Interest : \$ 25.32
Court cost: \$ 0.00
Atty fees : \$ 0.00
Coll fees : \$ 535.78
Total : \$ 1900.55

Claim(s) of:
SAN CLEMENTE COVE HOA
A NON-PROFIT CORPORATION

NOTICE OF INTENT

The above-referenced claim has been assigned to our firm. Because you have failed to comply with our request for payment, we may refer this account to our attorney for legal action, should he deem it appropriate. To prevent further collection efforts, payment in full is required immediately.

If you choose to ignore this notice then:

In the event judgment is rendered against you, sheriff fees for service of summons and complaint, legally allowed by the court, can be included in said judgment. Also, attorney fees will be charged if provided by contract. Interest will accrue at statute rates.

Sincerely,

Continental Central Credit, Inc.
Collection Agency
Desk: 5

THIS HAS BEEN SENT TO YOU BY A COLLECTION AGENCY. ALL ACCOUNTS ASSIGNED FOR COLLECTION MAY BE REPORTED TO EXPERIAN, CBI AND TRANS UNION CREDIT BUREAUS. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CREDITOR	AMOUNT	INTEREST	FEES	TOTAL
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CONTINUED FOR: DURHAM, SALLIE A ACCT# 3067702

CREDITOR	AMOUNT	INTEREST	FEES	TOTAL
SAN CLEMENTE COVE HOA	1,339.45	25.32	535.78	1,900.55
TOTAL	1,339.45	25.32	535.78	1,900.55

October 17, 2006
Sallie A. Durham
24161 Hollyoak, #A
Aliso Viejo, CA 92656

Continental Central Credit, Inc.
Attn: Pat Smith
1817 Aston Ave., Suite 105
P.O. Box 131120
Carlsbad, CA 92008

Re: San Clemente Cove HOA
Your File# 3067702
Notice dated 09-11-06
DISPUTED DEBT amount \$1,890.27

Dear Pat Smith:

I am in receipt of your collection notice dated 09-11-06. Be advised that I dispute the debt and demand verification.

I do not understand what this is about. The San Clemente Cove timeshare was foreclosed upon several years ago. Please provide a detailed accounting of what you claim I owe.

Do not contact me by telephone, all communications must be in writing and directed to my above address.

Sincerely,

Sallie A. Durham